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IN THE

Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, *ET AL.*,
Respondents.

CRYSTAL D. MEREDITH, CUSTODIAL PARENT AND NEXT FRIEND OF JOSHUA RYAN MCDONALD,
Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, *ET AL.*,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Ninth and Sixth Circuits

CONSOLIDATED BRIEF OF JOSEPH E. BRANN, DANIEL J. COULOMBE, EDWARD F. DAVIS, RONALD DAVIS, AND DARREL STEPHENS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTERESTS OF *AMICI CURIAE*

Amici are current and former law enforcement officers whose professional duties include working with federal, state, and local government officials, including school officials, to deter crime.[1] In *amici's* collective professional experience, based upon decades of leading police departments across the country, high school dropouts are significantly more likely to commit crime than are high school graduates. *Amici* are deeply interested in this case because policies that increase educational opportunity, such as the solutions devised by the Seattle, Washington and Louisville, Kentucky public school systems, promote high school graduation and thus help reduce crime. *Amici* are:

Joseph E. Brann, who served as the Director of the Office of Community Oriented Policing Services, United States Department of Justice, and as the Chief of the Hayward, California Police Department.

Daniel J. Coulombe, who serves as Chief of the Hermiston, Oregon Police Department.

Edward F. Davis, III, who serves as the Superintendent of the Lowell, Massachusetts Police Department.

Ronald Davis, who serves as Chief of the East Palo Alto, California Police Department.

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[1] Pursuant to Sup. Ct. Rule 37.3(a) (2006), the parties have consented to the filing of this brief. A blanket consent to *amici* participation in this case was given by all parties and is on file with the Clerk of the Court. Pursuant to Sup. Ct. Rule 37.6 (2006), counsel for *amici* state that this brief was not authored, in whole or in part, by any counsel for a party, and that no person, other than amici, or their counsel, made a monetary contribution to the preparation or submission of this brief.

Darrel Stephens, who serves as the Chief of the Charlotte-Mecklenburg, North Carolina Police Department.

SUMMARY OF ARGUMENT

The job of law enforcement is to create and maintain safe communities. For most law enforcement officials, the job requires that they understand why offenders commit crimes and think of ways that crime might be deterred. *Amici* have found that many children they arrest have dropped out of school. Based on their experience, *amici* believe that policies that increase the number of children graduating high school will contribute significantly to the reduction in crime.

School districts, like the ones in Seattle, Washington and Louisville, Kentucky, have pursued policies to create more opportunities for students. School officials have determined, in their expert judgment, that a more integrated public school system is a key aspect of these policies. That judgment has a solid foundation.

Minority students who attend more racially integrated schools have much higher graduation rates than those who attend segregated schools. For example, in St. Louis, Missouri, which has encouraged integration of schools, the difference in the percentage of African-American students who graduate from integrated St. Louis County suburban schools is dramatically higher than the percentage graduating from mostly African-American schools in the City of St. Louis Public School District.

If integration can reduce dropout rates, it will also reduce crime. Given the depth of the crime problem in our communities -- the lives shattered, the talents wasted -- *amici* urge that the Court not tie the hands and override the educational judgments of school officials pursuing these goals.

ARGUMENT

The courts below, applying strict scrutiny,[2] upheld the plans implemented in Seattle and Louisville because the courts recognized the judgment of the educators that racial diversity produces a number of compelling educational and social benefits in secondary education.[3] There is another compelling benefit that flows from diversity. Plans such as those implemented in Seattle and Louisville can decrease high school dropout rates. This, in turn, will have the profound benefit of decreasing crime. This compelling interest in fostering efforts to reduce crime through plans such as those used by school districts in Seattle and Louisville provides yet another reason why this Court should not impose a rigid constitutional barrier to those programs.

I. REDUCING THE HIGH SCHOOL DROPOUT RATE WILL REDUCE THE OVERALL CRIME RATE

Amici's message to children is simple: stay in school, stay out of crime. *Amici* firmly support school programs, such as the ones employed in Seattle and Louisville, because

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[2] *Amici* note the persuasiveness of Judge Kozinski's concurring opinion in the Ninth Circuit proceedings. *See Parents Involved Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 426 F.3d 1162, 1193-96 (9th Cir. 2005) (en banc), *cert. granted*, 126 S.Ct. 2351 (2006) (Kozinski, J., concurring) (arguing a "robust and realistic" rational basis standard of review should apply). Even assuming strict scrutiny applies, *amici* submit that the deterrent effect desegregation has on reducing crime is itself a sufficient compelling interest to justify upholding plans such as those used in Seattle and Louisville.

[3] *Parents Involved Cmty. Schs.*, 426 F.3d at 1173; *McFarland v. Jefferson Cty. Pub. Schs.*, 330 F.Supp.2d 834, 853-54 (W.D. Ky. 2004), *aff'd* 416 F.3d 513 (6th Cir. 2005), *cert. granted sub nom. Meredith v. Jefferson Cty. Pub. Schs.*, 126 S.Ct. 2351 (2006).

amici believe that these programs will help prevent crime by reducing the number of children who engage in truancy or dropout of school.

When children are not in school, they are more likely to be drawn into crime. Truancy is the often first sign of trouble for children.[4] "Truancy has been clearly identified as one of the early warning signs that youth are headed for potential delinquent activity, social isolation, and/or educational failure."[5] Truants are more likely to be involved with the juvenile justice system.[6] And, truants are "far more likely not to graduate from high school."[7]

Dropping out of high school in turn increases the likelihood of an individual getting involved with crime. High school dropouts account for the majority of the nation's

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[4] *See* U.S. Dep't of Edu. & U.S. Dep't of Justice, Manual to Combat Truancy 1 (1996), *available at* http://www.doe.k12.ga.us/_documents/doe/external/policy/policy_attendance_manual_truancy.pdf (last visited Oct. 10, 2006).

[5] Baker, et. al, *Truancy Reduction: Keeping Students in School*, Juv. Just. Bull., at 2 (U.S. Dep't of Justice, Office of Juv. Justice and Delinquency Sept. 2001), *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/188947.pdf (last visited Oct. 10, 2006).

[6] *Id.* at 2; *see also* Janna Heilbrunn & Ken Seeley, Nat'l Ctr. for Sch. Engagement Colo. Foundation for Families and Children, Saving Money Saving Youth: The Financial Impact of Keeping Kids in School 3 (2003), *available at* http://www.schoolengagement.org/TruancypreventionRegistry/Admin/Resources/Resources/23.pdf.

[7] Lorenzo A. Trujillo, *School Truancy: A Case Study of a Successful Truancy Reduction Model in the Public Schools*, 10 U.C. Davis J. of Juv. Law & Pol'y 69, 79 (2006) (citation omitted).

prison and death row inmates.[8] Estimates from the United States Department of Justice indicate that 30% of federal prison inmates, 40% of state prison inmates and 50% of death row inmates are high school dropouts.[9] Even more troubling, 33% of male high school dropouts will be incarcerated at some point in their lives before they reach 25 years of age.[10] One study indicates that in 1997, people *without* a high school diploma accounted for 54% of all state prison inmates, while people *with* a high school diploma made up only 21% of that population.[11] Individuals with a college or graduate degree made up an even lower percentage, 2.4%, of state prison inmates.[12] High school dropouts also account for more arrests than people with a high school diploma, General Educational Certificate ("GED") or college education.[13]

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[8] U.S. Dep't of Educ. Nat'l Ctr. For Educ. Statistics, NCES No. 2006-062, Dropout Rates in the United States: 2002 and 2003 1 (2006).

[9] *Id.* at 1 n.1.

[10] Michael Wald and Tia Martinez, *Connected by 25: Improving the Life Chances of the Country's Most Vulnerable 14-24 Year Olds* 6 (William and Flora Hewlett Found. Working Paper, 2003), *available at* http://www.hewlett.org/NR/rdonlyres/60C17B69-8A76-4F99-BB3B-84251E4E5A19/0/FinalVersionofDisconnectedYouthPaper.pdf (last visited Oct. 10, 2006).

[11] U.S. Dep't of Justice, NCJ-19567, Education and Correction Populations. Bureau of Justice Statistics Special Report 2 (2003), *available at* http://eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/22/1d/37.pdf (last visited Oct. 10, 2006).

[12] *Id.*

[13] Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports,* 2004 The Am. Econ. Rev. 155, 177 (noting that high school graduation reduces the arrest rate for all men).

The connection between dropout rates and crime is undeniable. This connection is particularly strong for minorities as "[m]inority state prison inmates [are] generally less educated than their white peers.[14]" The same 1997 study revealed that 44% of African-American state prison inmates and 53% of Latino inmates had not graduated from high school or received a GED while only twenty seven percent of white state inmates had not graduated from high school or received a GED.[15]

The higher crime rate for dropouts reflects (and contributes to) their decreased economic opportunities and higher rate of unemployment. In 2003, the median income for high school graduates, including individuals with a GED, was $20,431.[16] By contrast, during this same time period, the median income for high school dropouts was $12,184,[17] almost 40% less than the amount earned by high school graduates. High school dropouts also face increased risk of unemployment. A study that followed a large group of high school students from 1979 through 1992 found that 80% of all the students who failed to receive a high school diploma "were unemployed for at least a full year [and] half were disconnected from the labor force for 3 or more years between their 18th and 25th birthdays."[18]

Low wages, poverty, and unemployment boost the crime rate. The result is that children who drop out of high school often impose significant social costs on society,

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[14] U.S. Dep't of Justice, *supra* note 11, at 7.

[15] *Id.*

[16] U.S. Dep't of Educ., *supra* note 8, at 1.

[17] *Id.*

[18] Wald & Martinez, *supra* note 10, at 6.

particularly through criminal activity and the use of social services.[19]

The flip side of the correlation between dropout rates and crime is that increasing education can reduce criminal activity. Studies show that increasing the average education level by *only* one year has the net effect of reducing overall arrests by 11%.[20] And it is possible that increasing graduation rates by 10% would reduce arrest rates for violent crimes, such as murder and assault, by as much as 20%.[21]

Increased schooling has a larger impact in reducing the likelihood of incarceration for African-Americans than it does for whites. One additional year of schooling results in a 0.10 percentage point reduction in the probability of incarceration for whites, but a 0.37 percentage point reduction in the probability of incarceration for African-Americans.[22] Since African-Americans are incarcerated at a higher rate than whites, it is possible that "23 percent of the difference in incarceration rate could be eliminated by simply raising the average education levels of blacks to the same level as that of whites."[23]

Statistics, however, do not tell the full story. *Amici* experience crime not as statistics but as serious and costly events with life-shattering impact upon members of their communities. What the numbers do show, however, is that improving education and reducing dropout rates will eliminate some crime. A mere one percent increase in high

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[19] *Id.* at 4.

[20] Lochner & Moretti, *supra* note 13, at 175.

[21] *Id.* at 176.

[22] *Id.* at 157.

[23] *Id.* at 162.

school graduation rates in 1990 might have saved the lives of 400 people who were murdered and avoided an additional 8,000 assaults.[24] Moreover, such an increase might have resulted in an estimated 100,000 fewer crimes, including violent crimes such as murder and assault, and property crimes such as burglary, larceny and car theft during this period.[25] Whatever public schools can do, within the law, to improve graduation rates will not only improve the lives of children, it will also make our communities safer.

II. PROGRAMS THAT FOSTER DIVERSITY IN SCHOOLS REDUCE DROPOUT RATES AND THEREBY REDUCE CRIME

America's public schools are rapidly becoming more segregated.[26] The average child in the public school system today is attending a school in which the majority of the students are all of the same race. For example, during the 2003-2004 school year, white students accounted for 58% of all students enrolled in public school, yet the average white student attended a school in which 78% of the other students were also white.[27] Similarly, African-American students made up 17% of all public school students, but the average

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[24] Lochner & Moretti, *supra* note 13, at 182.

[25] *Id.*

[26] Jane W. Schofield & Leslie R.M. Hausmann, *The Conundrum of School Desegregation: Positive Student Outcomes and Wanning Support*, 66 U. Pitt. L. Rev. 83, 90 (2004) (citation omitted) (noting that "schools in the U.S. have undoubtedly become more segregated in the past fifteen years").

[27] Gary Orfield & Chungmei Lee, The Civil Rights Project at Harvard Univ., *Racial Transformation and the Changing Nature of Segregation* 8 (2006) [hereinafter Transformation], available at http://www.civilrightsproject.harvard.edu/research/deseg/Racial_Transformation.pdf (last visited Oct. 10, 2006).

African-American student attended a school in which 53% of the other students were also African-American.[28] The story for Latino children is no different. Latinos students made up 19% of all public school students, however the average Latino student attended a school in which 55% of the other students were also Latino.[29]

A. African-American And Latino Students In Segregated Schools Have A Higher Dropout Rate

The "nation's shockingly high dropout problem is squarely concentrated in heavily minority high schools . . . ."[30] In fact, "whether a student attends a school district with a high concentration of minority students . . . is . . . a strong predictor of failing to graduate."[31] Nationwide, 68% of all students graduate.[32] However, in school districts in which the majority of the students are racial minorities, the

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[28] *Id.* at 9.

[29] *Id.*

[30] Gary Orfield & Chungmei Lee, The Civil Rights Project at Harvard Univ., *Why Segregation Matters: Poverty and Educational Inequality* 5 (2005), *available at* http://www.civilrightsproject.harvard.edu/research/deseg/Why_Segreg_Matters.pdf (last visited Oct. 10, 2006).

[31] Gary Orfield et al., The Civil Rights Project at Harvard Univ., The Urban Inst. Advocates for Children of N.Y. & The Civil Society Inst., *Losing Our Future: How Minority Youth are Being Left Behind By the Graduation Rate Crisis* 6 (2004), *available at* http://www.civilrightsproject.harvard.edu/research/dropouts/LosingOurFuture.pdf (last visited Oct. 10, 2006).

[32] *Id.* at 84 Appendix 4, Table A.

graduation rate is much lower as only a little over half, or 56.4% of the students graduate.[33]

The situation is even worse in major urban cities with predominately minority school districts. In Houston, Texas and New York, New York, two cities with predominately Latino school districts, the graduation rates are an abysmal 40% and 38% respectively.[34] This means that less than half of the students in the segregated school districts of these cities are graduating. A similar situation exists in the predominately African-American school districts in Oakland, California and Cleveland, Ohio, which have paltry 30.4% and 30% graduation rates respectively.[35] This means that 2 out of 3 students in these segregated school districts do not graduate from high school.

The reasons for higher dropout rates in heavily minority schools are wide-ranging and complex.[36] *Amici* are law enforcement officers, not experts in the social forces that produced predominately minority school districts. But as law enforcement officers, *amici* understand that more high school dropouts usually means higher crime rates.

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[33] *Id.* at 5.

[34] *Id.*

[35] *Id.*

[36] *See Transformation*, *supra* note 27, at 29 (noting that various inequalities exist in predominately minority schools such as "less qualified, less experienced teachers, lower levels of peer group competition, more limited curricula taught at less challenging levels...any many other factors that seriously affect academic achievement.")

B. Desegregating Schools Lowers The Dropout Rate For Minority Students

Desegregation in education has had a profound impact on achievement by minority students. One area in which desegregated education has noticeably affected student achievement is the high school dropout rate. For minority students, particularly African-American students, attending a desegregated school strongly correlates with lower dropout rates. In fact, the dropout rate for African-American students in school districts that desegregated between 1970 and 1980 declined by 3.6%.[37] The positive correlation between desegregated schools and lower dropout rates for African-American students can also be seen in school districts that have been released from court-ordered desegregation plans. Many school districts that have been released from court-ordered desegregation plans have seen a significant rise in African-American dropout rates, particularly in regions outside of the South.[38]

In many instances, the number of minority students who graduate from high school in integrated schools far outpaces the number of minority students in segregated schools. The school system in St. Louis, Missouri is a perfect example of this. A program called the St. Louis

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[37] Jonathan Guryan, *Desegregation and Black Dropout Rates* 16 (Nat'l Bureau of Econ. Research, Working Paper No. 8345, 2001), *available at* https://www.nber.org/papers/w8345 (last visited Oct. 10, 2006).

[38] Byron F. Lutz, *Post Brown v. Board of Education: The Effects of Court Ordered Desegregation* 3 (December 19, 2005) (unpublished Ph.D. dissertation) (on file with Finance and Economics Discussion Series, Division of Research & Statistics, Federal Reserve Board, Washington D.C.), *available at* http://www.federalreserve.gov/pubs/feds/2005/200564/200564pap.pdf (last visited Oct. 10, 2006).

Student Transfer Program ("Transfer Program") allows African-American students residing in the city of St. Louis to attend one of several school districts in the suburban St. Louis County. The purpose of the program is to integrate the predominately white St. Louis County schools while at the same time desegregating the predominately African-American city of St. Louis public schools. The results have been telling.

In part due to the Transfer Program, Brentwood School District, located in St. Louis County, has a student population that is 28% African-American and 68% white.[39] In 2005, 87.5% of African-American students in the Brentwood school district graduated from high school, a number well above the national graduation rate average of 68%.[40] Similarly, Valley Park School District, also located in St. Louis County, has a student population that is 28% African-American and 65% white.[41] In 2005, Valley Park

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[39] St. Louis Black Leadership Roundtable, 2005 Regional Report Card: Eliminating the African American Academic Achievement Gap 1, *available at* http://www.blackleadershiproundtable.org/Edu/2005ReportCardRegionalIndex.pdf (last visited Oct. 10, 2006).

[40] St. Louis Black Leadership Roundtable, 2005 Regional Report Card: Eliminating the African American Academic Achievement Gap 1, *available at* http://blackleadershiproundtable.org/Edu/ReportCards/Brentwood.pdf (last visited Oct. 10, 2006).

[41] St. Louis Black Leadership Roundtable, 2005 Regional Report Card: Eliminating the African American Academic Achievement Gap 1, *available at* http://blackleadershiproundtable.org/Edu/ReportCards/ValleyPark.pdf (last visited Oct. 10, 2006).

School District had an outstanding graduation rate of 100% for African-American students.[42]

The graduation rates for the African-American students attending the more integrated school districts in St. Louis County stand in sharp contrast to the graduation rates for African-American students attending the more segregated schools in the City of St. Louis Public School District. The City of St. Louis Public School District has a student population that is 81% African-American and 15% white.[43] As is the case with many predominately minority school districts, in 2005 the number of African-American students that graduated from high school was below the national average as only 60% of African-American students graduated.[44] The St. Louis experience suggests that minority children are likely to have higher graduation rates when they attend more integrated schools.

In *Grutter v. Bollinger*, this Court found that the University of Michigan law school "has a compelling interest in attaining a diverse student body." 539 U.S. 306, 328 (2003). Among other reasons, the Court noted that a diverse student body "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals." *Id.* at 330. In reaching that decision, the Court deferred to the "Law School's educational judgment that such diversity is essential to its educational mission . . . ." *Id.* at 328. Such deference is, if

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[42] *Id.*

[43] St. Louis Black Leadership Roundtable, 2005 Regional Report Card: Eliminating the African American Academic Achievement Gap 1, *available at* http://blackleadershiproundtable.org/Edu/ReportCards/SLPS.pdf (last visited Oct. 10, 2006).

[44] *Id.*

anything, more appropriate here -- the interest is more compelling -- because the educators in the school districts are not merely seeking ways to prepare students for a diverse workforce. They are struggling to keep them in school and out of jail.

Amici understand that the reasons for lower dropout rates in integrated schools are not always certain. But educators are entitled to exercise their expert judgment in assessing and responding to the possibility that integrated schools do indeed lower the dropout rate for minority students, especially African-American students. It is critical that these educators have the flexibility to try reasonable approaches to reduce the dropout rate by creating integrated schools. Given this, *amici* believe that it is appropriate to allow local school districts to formulate policies that foster diversity as a means of lowering the high school dropout rate.

CONCLUSION

Children are children regardless of their race. The disproportionate number of crimes committed by minorities is a problem that law enforcement officials cannot ignore. *Amici* believe that modest integration programs, such as those employed by the Seattle and Louisville school districts, have the potential to reduce crime by lowering the dropout rates of minority children. As law enforcement officers who have seen firsthand the devastating effects of crime on society as a whole, *amici* urge this Court not to block educators from exploring this solution. The Court should permit local school districts to implement policies that foster integration in schools.

Respectfully submitted,

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